IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.440 OF 1999.

The State of Maharashtra
through Collector Sangli : Appellants.

versus

Shri Ramchandra Krishna Patil : Respondent.

ALONG WITH

FIRST APPEAL NO.691 OF 1997

The State of Maharashtra
through Collector Sangli : Appellants.

versus

Shri Bapu Santu Gavade
since deceased through his
legal heirs.
1a. Shri Shivaji Bapu Gavade
& ors. : Respondents.

ALONG WITH

FIRST APPEAL NO.398 OF 2005

The State of Maharashtra
through Collector Sangli : Appellants.
versus
Nivrutti Shivram Patil : Respondent.

Mr.B.R.Patil, Acting Government Pleader for the State/Appellants.
Mr.R.V.More for the respondents.

ALONG WITH

FIRST APPEAL ST.NO.2072 OF 1995

The State of Maharashtra
through Collector Sangli : Appellants.
versus
Balwant Baburao Patil : Respondent.

ALONG WITH

FIRST APPEAL ST. NO.2036 OF 1995

The State of Maharashtra
through Collector Sangli : Appellants.
versus
Bapu Tatya Patil deceased
1A Narayan Bapu Patil & ors. : Respondents.

ALONG WITH

FIRST APPEAL ST.NO. 2058 OF 1995

The State of Maharashtra
through Collector Sangli : Appellants.

versus

Shamrao Hari Nikam : Respondent.

ALONG WITH

FIRST APPEAL ST.NO.32096 OF 1998

The State of Maharashtra
through Collector Sangli : Appellants.

versus

Shri Patangrao Tatoba Patil : Respondent.

Mr.S.N.Gawade, AGP for the State.
Mr.R.V.More for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 7th April 2005.

ORAL ORDER

1. All these appeals grouped together as they arise out of separate orders of the Reference Court in a Group of References, but the notification under Section 4 of the Land Acquisition Act was common; award was common and, therefore, the Reference Court passed separate orders, but the basis of the orders is same. Notification under Section 4 in respect of these lands was 18th July 1985. The Special Land Acquisition Officer awarded Rs. 19500/- per hector in Appeal Nos.440/99 and 691/97; Rs.33000 per hector in Appeal No.398 of 2005; Rs.29250/- in Appeal Stamp Nos.2072/95, 2058/95 and 32096/98 and, Rs.21000/- in Appeal Stamp No.2036/95. The land owners were not satisfied with the compensation so awarded, therefore, they filed References. All of which were decided by the Reference Court i.e. Second Joint Civil Judge, Sr.Division Sangli on 18th March 1994. According to the claimants their lands were worth Rs.1,50,000/- per hector and, therefore, the compensation was required to be enhanced. The Reference Court enhanced the compensation to Rs.75,000/- and Rs.1,00,000/- per hector in respective References and hence these appeals by the State.

2. The learned AGP pointed out at the out set that firstly the acquired lands were of Jirayat lands and crops like Jawar and groundnut were being taken. He also pointed out that in paras 6 and 7 of the Judgment, the Reference Court took into consideration different sale deeds, but most of the sale deeds, so considered, are subsequent to the date of notification under Section 4. Even the sale deed between Mahadeo Co-operative Water Supply Society and Shankar Abaji Kulkarni was of 1986 i.e. of next year to the said notification. Other sale deeds were of 9th October 1990; 9th January 1990; 29th May 1990 and, two sale instances were of 1986. The Court noted that it will have to decide as to what was the market price of acquired lands on 18th July 1985. But further noted that this will have to be done with the help of above said sale instance. This approach of the Reference court is totally and completely wrong. All the sale deeds are of subsequent to the date of notification under Section 4 and could not have been relied upon and they could not have been made basis for enhancement of compensation.

3. Counsel for the claimants strenuously, repeatedly and vehemently urged that all these lands are irrigated lands and, he relied upon that part of para 6 of the judgment wherein the Reference court has considered the existence of Mahadeo Co-operative Water Supply Society since 1974. There were total 382 members of the said society and they have mortgaged 300 acres land and obtained loan for jackwell, pipe line, pump house, electric motor, distribution of line and main line etc. and, that the said society constructed lift irrigation scheme at village Khed from Krishna river, which was about 1.5 k.m. away from the jackwell of the society. All this may be true, but the question is, whether any of the claimants have stated that their land is irrigated from river Krishna. The answer in this regard has to be in the negative. For Example, claimant Ramchandra Patil in his evidence has admitted in Examination-in-chief that his land is Jirayat land and he has been taking Jawar crops and groundnut crops. Not a word is uttered by the said Ramchandra about any kind of irrigation or facility of irrigation or he is being the member of the said society mortgaging the land and contributing for irrigation facility,

instruments appartus referred to above. Therefore, it may be that the society is there for the purpose of irrigation facility to its members. If the claimants have not availed of that facility and they are cultivating their lands as Jirayat lands, not a drop of water from river being brought to their agricultural land then, Reference Court went on completely wrong footing in enhancing the compensation from Rs.9500/- to Rs.75,000/- or from Rs.21,000/- or Rs.33,000/- to Rs.1,00,000/- per hector. What is observed by the Reference is that there was every likelihood and possibility to bring the acquired lands under irrigation by becoming member of the said Society. The notification under Section 4 is of 1985, the society came into existence in 1974, but for 11 years these claimants neither became the members nor they took any benefit of irrigation facility from the said society. Therefore, the hope expressed by the Reference Court that there was possibility to bring the acquired lands under irrigation was without any basis and the compensation at any rate could not be fixed on some assumption.

4. This is, therefore, a case where there

are no sale deeds prior to the date of notification under Section 4. All the sale deeds are subsequent to the date of notification under Section 4. They could not have been considered. There is no evidence that the lands were irrigated at any time and, therefore, the orders of the Reference Court dated 18th March 1994 in respective matters enhancing the compensation are perverse. They are liable to be set aside. Hence the order :-

:ORDER:

All the appeals are allowed.

Impugned orders in the respective appeals are set aside. The claimants in all the appeals will be entitled to the compensation as awarded by the Special Land Acquisition Officer in the respective awards and nothing more with legal benefits in proportionate to the ratio of compensation awarded as above.

Since the appeals are heard and decided on merits, the civil applications in the

respective appeals do not survive. They are disposed of and the delay, if any, is condoned in all matters.

[D.G.DESHPANDE]

07/04/2005 JUDGE.